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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,727	01/17/2001	Martinas Kuslys	88265-408	4832

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WINSTON & STRAWN
PATENT DEPARTMENT
1400 L STREET, N.W.
WASHINGTON, DC 20005-3502

EXAMINER
PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
1761	10

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/760,727	Applicant(s) KUSLYS ET AL.	
	Examiner Carolyn A Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)[·] Responsive to communication(s) filed on *09 October 2001* .

2a)[ ] This action is **FINAL**. 2b)[X] This action is non-final.

3)[ ] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)[·] Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)[ ] Claim(s) _____ is/are allowed.

6)[·] Claim(s) *1-22* is/are rejected.

7)[ ] Claim(s) _____ is/are objected to.

8)[ ] Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)[ ] The specification is objected to by the Examiner.

10)[ ] The drawing(s) filed on _____ is/are: a)[ ] accepted or b)[ ] objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)[ ] The proposed drawing correction filed on _____ is: a)[ ] approved b)[ ] disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)[ ] The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)[ ] Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)[ ] All b)[ ] Some * c)[ ] None of:

1.[ ] Certified copies of the priority documents have been received.

2.[ ] Certified copies of the priority documents have been received in Application No. _____ .

3.[ ] Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)[ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) [ ] The translation of the foreign language provisional application has been received.

15)[ ] Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) [X] Notice of References Cited (PTO-892)	4) [ ] Interview Summary (PTO-413) Paper No(s) ___
2) [ ] Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) [ ] Notice of Informal Patent Application (PTO-152)
3) [X] Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 .	6) [ ] Other:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Malmoud (5,104,676) and see the Abstract and columns 4-5.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 5, 7-9 and 11-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malmoud et al.

Malmoud discloses a weight control product where 27% of the calories are provided from protein, 50% of the calories are provided from carbohydrates and 23% of the calories are provided from fat (abstract). The process of preparing the product is shown at column 5. The packaging of the product is disclosed at column 6, lines 11-13. The product is also stated to contain a wide array of nutrients. The absence of flavor is not

specifically mentioned in reference, but to eliminate or change the flavor of Mahmoud would have been an obvious way to enhance the weight control product line. It is appreciated that the use of the product in the specific foods of claims 8 or 9 is not mentioned in reference but to supplement a beverage with key nutrients would have been an obvious way to boost the energy nutrients of a food product. To package the product in dosages of claim 18 would have been an obvious way to provide portion control.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bonnasse (5,916,612) and see column 2, lines 40-44.

Bonnasse discloses a granular food containing 5-95 parts carbohydrate, up to 40 parts protein and up to 80 parts fat. The ingredients are mixed and dried into granules. Although the caloric content of the ingredients is not specifically addressed, these values can be easily determined because the caloric content of fat, protein and carbohydrate is well known in the art.

Claims 2, 3 and 5-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonnasse.

Bonnasse discloses a granular food containing 5-95 parts carbohydrate, up to 40 parts protein and up to 80 parts fat. The ingredients are mixed and dried into granules. Although the caloric content of the ingredients is not specifically addressed, these values can be easily determined because the caloric content of fat, protein and carbohydrate is well known in the art. Maltodextrin is used in the reference (column 4, line 5). The skim milk powder of Bonnasse is a source of whey proteins. The claims appear to differ from the reference in the recitation of canola oil as an oil source. Canola oil would have been an obvious choice of oil in the composition of Bonnasse because of its availability and low cost. The absence of flavor is not specifically mentioned in reference, but there does not appear to be any added flavor in the product. The lack of teaching of an added flavor is a clear suggestion that the product is devoid of flavor. It is appreciated that the use of the product in the specific foods of claims 8 or 9 is not mentioned in reference but to supplement a food with the key nutrients of Bonnasse would have been an obvious way to boost the energy nutrients of a food product. To package the granular material would have been an obvious way to provide portion control for an energy supplement. To flavor the product would have been an obvious way to

improve the taste of it. To include vitamins and minerals would have been an obvious way to boost the nutrient content of the product.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rubin (5,013,569).

Rubin discloses an infant formula that contains fat, carbohydrate and protein in amounts set forth on the table at column 7. Although the caloric content of the ingredients is not specifically addressed, these values can be easily determined because the caloric content of fat, protein and carbohydrate is well known in the art. The absence of flavor is not specifically mentioned in reference, but there does not appear to be any added flavor in the product. The lack of teaching of an added flavor is a clear suggestion that the product is devoid of flavor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden

CAROLYN PADEN
PRIMARY EXAMINER
GROUP 1300 1761